



September 7, 2011

Ms. Julie Berger, Deputy Director
Mecklenburg County Office of the Tax Collector
700 E. Stonewall St.
Charlotte, North Carolina 28202

Re: Charlotte Privilege License Tax

Dear Julie:

On August 26, 2011, we received from Thomas E. Powers III, Assistant City Attorney for the City of Charlotte, a response to the public records requests we had previously submitted through counsel to the Mecklenburg County Office of the Tax Collector (the "OTC"), relating to the OTC's attempt to collect Charlotte's privilege license tax from certain accounting firms having offices in Charlotte. We have reviewed with our counsel the documents included in the response, and want to provide you with our present view of the matter in hopes of facilitating future discussions.

As you know, subsection (h) of section 105-41 of the North Carolina General Statutes states that counties and cities may not levy any license tax on "the business or professions" taxed under that section. The profession of public accountant is one of the professions taxed under section 105-41. Specifically, subsection (c) provides that "[e]very person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars (\$50.00), and in addition shall pay a license of twelve dollars and fifty cents (\$12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts." Since the profession of public accountant is taxed under N.C.G.S. § 105-41(c), the imposition of Charlotte's privilege license tax on firms engaged in the public practice of accounting would violate N.C.G.S. § 105-41(h) and is therefore not permitted.

We received a copy of the memorandum from Mr. Powers to OTC Director Neal Dixon dated July 20, 2011, regarding the imposition of privilege license taxes upon businesses and professions listed under N.C.G.S. 105-41. That memorandum (the "City Attorney's Memorandum") states, without citing authority, that N.C.G.S. § 105-41(h) only prohibits local governments from "levying privilege license taxes upon any 'activity' listed in North Carolina General Statute §§ 105-41(a), and -41(c)" and that a business or profession that conducts "a separate 'activity' ... cannot shield itself from the levy of a [local privilege license tax]." However, there is no reference in N.C.G.S. § 105-41(h) to "separate activities" (or "activities" at all, for that matter). In our view, a firm engaged in the public practice of accounting may not be subjected to local privilege license tax at all.

Even if Charlotte were permitted to levy its privilege tax on accounting firms that engage in activities beyond the "public practice of accounting," we would be surprised to learn that any of the accounting firms to which the OTC has directed its inquiries engage in any such activities,

given the broad scope of the discipline. In our view, any service performed by an accounting firm that is subject to the oversight or disciplinary authority of the State Board of Certified Public Accountant Examiners (the "Board") certainly falls within the scope of the "public practice of accounting" for this purpose. The Board is an agency of the State of North Carolina. Its powers and duties include formulating rules for the examination of applicants for CPA licenses, for the continuing professional education of persons holding CPA licenses, and for report review and peer review of audits, reviews, compilations, and other reports issued on financial information in the public practice of accountancy. The Board is also authorized by statute to adopt rules of professional ethics and conduct to be observed by certified public accountants in the state.

We presume from the City Attorney's memorandum and other materials produced in response to our records requests that the OTC potentially views "consulting services" as being outside of the scope of the public practice of accounting. However, we note that the Board has defined the "public practice of accountancy" to include the performance of certain consulting or management advisory services and has issued rules prohibiting certified public accountants from rendering consulting services unless they comply with the Statements on Standards for Consulting Services issued by the American Institute of Certified Public Accountants (the "AICPA"). See 21 N.C.A.C. 08A.0307 and 08N.0304. The AICPA's Statements on Standards for Consulting Services define "consulting services" broadly to include consultations (including the review of client business plans), advisory services (including the performance of operational reviews and improvement studies and assistance with strategic planning), implementation services (including computer system installation and support), transaction services (including valuation services, analyses of potential mergers and acquisitions, and litigation services), staffing and other support services (including trusteeship and controllership activities), and product services (including the sale and delivery of packaged training programs and the sale and implementation of computer software).

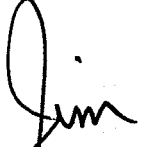
Since the performance of consulting services is regulated by the Board, the performance of such services by accounting firms falls within the scope of the "public practice of accounting" for purposes of N.C.G.S. § 105-41(c). Thus, the imposition of local privilege license taxes on those services is prohibited by N.C.G.S. § 105-41(h).

If the OTC believes accounting firms in Charlotte are performing consulting services that are outside the scope of the Board's regulatory authority, we would appreciate receiving from the OTC a description of those services. We assume the OTC is not taking the untenable position that all consulting services performed by accounting firms are subject to Charlotte's privilege license tax. If this assumption is correct, the OTC should clarify its position by describing with some degree of specificity the types of consulting services it believes Charlotte has the authority to tax. We expect such a clarification would foster more productive discussions between the OTC and the NC Association of CPAs (and between the OTC and individual accounting firms).

Finally, we note that local taxes are required to be uniform under the Constitution of the State of North Carolina. It seems possible that the OTC's application of Charlotte's privilege license tax ordinances to accounting firms could violate the requirement of uniformity. However, this would likely depend on the types of services the OTC purports to be subject to tax, which, as indicated above, remains unclear.

We hope that you will find this letter helpful. We would be happy to meet with the OTC to discuss this matter further. As you know, the views of the association on this matter are not necessarily the views of all of the members of the association. However, we are in communication with our members and are sharing our views. I hope you agree that our role in communicating with our member firms has been beneficial to you and that you will continue to delay enforcement efforts with individual firms until we have an opportunity to fully present our views in a face-to-face meeting with you and others.

Very truly yours,



James T. Ahler
Chief Executive Officer

cc: Debbie Lambert, CPA, Chair, NCACPA Board of Directors
Jay Lesemann, Jr., CPA, Chair Elect, NCACPA Board of Directors
Bo Biggs, CPA, Chair, NCACPA Government Relations Committee
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